GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute.—Industrial Dispute between the Workmen and the Management of the Gokak Mills Ltd. Gokak falls, Belgaum District.

Award of the Industrial Tribunal, Bangalore—Published.

Read the following papers:

(1) Letter No. I. T. 1928-29/67-68, dated 30th January 1968 from Shri A. Panchakshariah, Presiding Officer, Industrial Tribunal, Bangalore.

BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE BANGALORE.

Dated: 30th January 1968.

Present

Sri A Panchakshariah, B.A. (Hons.). LL.B., ... Presiding Officer.

I.D No. 108 of 1966

Workmen of Gokak Mills, Ltd., Gokak Falls, Belgaum District.
... *First Party*

Vs.

Management of Gokak Mills, Ltd., Gokak Falls, Belgaum District.
... *Second Party*

Appearances

For I Party.—Sri K. P. Sachindranath, Vice-President INTUC., Mysore Branch.

For II Party.—Sri R. G. Rajwade, Chief Labour and Establishment Officer of the Mills.

Reference

G. O. No. LMA 422 LLD65, Bangalore, dated 22nd April 1966.

AWARD

The present dispute is between the workmen and management of Gokak Mills, Ltd., Gokak Falls, Belgaum District. The dispute is in relation to the claim for wages for the strike period between 28th August 1965 and 5th September 1965.

The wages for the strike period was one of the demands raised by the workmen and was the subject matter of conciliation proceedings before the Assistant Labour Commissioner, Belgaum Division, Hubli. The conciliation in this regard took place on 9th November 1965. On the failure of the conciliation the Government of Mysore referred the dispute in regard to wages for the strike period on 22nd April 1966 by Order No. LMA 422 LLD 65. The said dispute was registered as I.D. No. 103 of 1966 and notice was issued to the I party to file the claim statement. The I Party is the Gokak Girni Rashtriya Mazdoor Sangh, Gokak Falls, represented by the General Secretary, G. G. R. M. Sangh. The II Party is M/s. Gokak Mills, Ltd., Gokak Falls, represented by Sri R. G. Rajwade, Chief Labour and Establishment Officer, Managing Agents. The dispute as narrated in the Order of Reference is as follows:—

> "Is the mangement of M/s. Gokak Mills, Ltd., Gokak Falls, District Belgaum, justified in refusing the claims for the wages for the strike period between 28th August 1965 to 5th September 1965 to their workmen?
>
> If not, what other relief the workmen are entitled to?"

2. The I Party filed a Claim statement on 6th August 1966. After narrating the history of the Gokak Mills and the policy of repression followed by the II Party the I Party submits that for the yeare 1963 and 1964 though the management had made fabulous profitsbonus was not declared. The I party claims that the profits madeby the II Party in those years was more than sufficient to declare 20 per cent of their earnings as bonus for these two years. The I Party workmen further contend that this fabulous profit was earned by the company by the sweat and toil of the workmen and they also contend that never in the history of this company was any voluntary bonus paid, and it was paid only after lot of struggle by the workmen. Although it had been the custom of the company to declare bonus and pay the same in the months of June or July every year the company did not pay, much less declared bonus for the years 1963 and 1964. Simultaneously the cost of living was

shooting up and the workmen were not able to make both ends meet with what little they were paid as wages. This situation caused anxiety in the mind of the workmen and they were perturbed. They waited till almost the end of August 1965 to get this bonus but it was not until 28th August 1965 the Company put up a Notice declaring only 4 per cent of their total earnings as bonus for the year 1964. There was not a whisper for the bonus for 1963. The workmen were reluctant to accept this 4 per cent bonus for the year 1964. Being agitated about the attitude of the company the workmen were compelled to go on strike from the 2nd shift on 28th August 1965. Accordingly all the workers went on strike. Immediately on the very next day all the workmen met in a meeting and constituted an action committee on 29th August 1965 to negotiate with the company in the matter of bonus for these two years. Even when the I Party demanded from the II Party the calculations and the basis for arriving at 4 per cent bonus, the Company refused to furnish the same. Since there was no settlement with regard to this issue, the matter has been referred for adjudication on 20th April 1966 regarding the bonus issue. The I Party contends that the company is mainly responsible for the strike since it failed to declare bonus and make payment as usual for 1964 and to declare any bonus for 1963 and furnish calculations leading to declaration of bonus for the year 1964. The Union contends that the strike was perfectly legal and justifiable. The strike continued up to 5th September 1965 when at the intervention of the Assistant Labour Commissioner the workmen called off the strike and joined duty from 6th September 1965 and in the meanwhile the company declared bonus at the rate of 8.44 per cent since the Union contends that the strike between 28th August 1965 and 5th September 1965 was for justifiable cause the workmen are entitled to wages for this period.

3. The II Party has filed the written statement on 29th August 19 6 Most of the allegations in the claim statement are denied. The II Party contends that between the I Party and the II Party there have been several settlements with regard to the outstanding disputes as at one point of time the I Party Union was the Representative Union. There was no custom with this company prevailing regarding the declaration of bonus in the months of June or July every year. The payment of bonus being dependent on final settlement of the dispute raised every year by the Sangh or other Unions such payments if due were made only after the settlements were reached and not necessarily in the month of June or July. As for the bonus for 1964, the company

submits that before the question of any demand or negotiations regarding the quantum was raised, the President of India promulgated an Ordinance called the Payment of Bonus Ordinance, 1965. According to this Ordinance the company was required to pay bonus strictly in accordance with the terms of this Ordinance. The Company submits that this Ordinance was beset with complexities and ambiguties regarding which there was no authoritative declaration available and therefore the company requested the State Government under Section 19 of the Ordinance to grant time for 6 months from 1st September 1965 for payment of bonus for the year 1964. However, under Section 19 (*b*) of the Bonus Ordinance, the company was required to pay for the year ending 31st December 1964 bonus to the employees before 31st August 1965. The Company's accounting year and also the financial year is the Calendar year, *i.e.*, from 1st of January to 31st of December every year. But because of the ambignous in the Bonus Ordinance, the Company requested for further time for clarification and this fact was published by means of a Notice on 21st August 1965 and the workers were told by this Notice that because of the ambiguities in the provisions of the Ordinance, calculations of bonus under the Bonus Ordinance could not be made and that as soon as the clarifications which were sought by the company were available. bonus under the Ordinance would be paid. By another Notice dated 28th August 1965 the workmen were further advised that the ambignous provisons were still not clarified and the Company had applied for extension of time limit for payment of bonus for 1964. However, pending clarifications the company was prepared to pay advance bonus at the rate of 4 per cent of the total annual wages of the employees on 31st August 1965 and that if there was any balance due it would be paid after getting the clarifications of the ambiguous provisions. The II Party further submits that this indicates the *bona fide* on the part of the Company in making efforts to pay bonus in time for the year 1964. Regarding bonus for 1963, the II Party contends that this is a thoroughly false statement made by the I Party. The Company submits that pending finalisation of Bonus Commission's recommendations it had voluntarily paid bonus equivalent to one month's basic wages in November 1964 for the year 1963 to all at the Mills. The II Party further contends that it is entirely misleading and mischievious to allege that the company had failed to declare bonus for the year 1963. There was no cause for the workmen to think that the Company would pay bonus only at the rate of 4 of their total earnings for the year 1964 as published in the Notice dated 28th August 1965.

Notwithstanding the dispute raised by the I Party the Company had paid 8.22 per cent of the gross wages for the year 1964. Therefore the State Government had refused to refer the matter for adjudication because the State Government was satisfied that the dispute did not permit a Reference for adjudication. Finally the II Party contends that the strike for which wages are claimed in this Reference was entirely an indefencible act. The grievances of the workmen, if at all, were purely imaginary and for excuses which were not even plausible. It was thoughtless strike involving not only the Company in havy loss but also involving the workers in heavy disadvantages. The strike was not Justifiable and the Sangh has used its weapon of strike indiscriminately. The strike being utterly indefencible, unjustified, unreasonable and against all cannons of justice, the I Party is not entitled to any wages for the period of the strike. This in brief is the statement of the II Party.

4. The I Party has filed a reply to the Counter statement denying most of the allegation in the counter-statement and affirming the claim statement. On the strength of these pleadings only two issues have been framed by me in addition to the points of dispute in the Reference. The 1st issue that is framed is as follows:

> "1. Was the strike between 28th August 1965 and 5th September 1965 justified and if so, is the Management of the Gokak Mills, Ltd., Gokak Falls, right in refusing the claims for wages of the workmen for the strike period?"

Since it is not pleaded in the counter statement that the strike was illegal no issue was framed to this effect. In other words, whether the strike was legal or illegal has not been the subject matter of this dispute. However at the time of the argument Sri Rajwade appearing for the II Party attempted to show that the strike was illegal as no notice was given by the workmen before commencing the strike. This contention cannot be upheld for two reasons. One is that it is not pleaded in the counter-statement that the strike was illegal. What is specifically pleaded in the counter-statement is that the strike was not justified, it was not warranted, uncalled for and unjustified Nothing is stated regarding the legality or otherwise of the strike. The 2nd reason is that this strike cannot be said to be illegal as no notice is required to be issued by the party launching the strike against the management. A strike is illegal only in

cases of public utility industries if it is launched without a previous notice. Under Section 22 of the Industrial Disputes Act, clause (a) definitely lays down that :—

> "No person employed in a public utility service shall go on a strike in breach of a contract without giving the employer a notice of strike as hereinafter provided within six weeks before striking or (b) without 14 days of giving such notice or (c) before the expiry of the date of strike specified in any such notice as aforesaid or (d) during the pendency of any conciliation proceedings before a Conciliation Officer or 7 days after the conclusion of such proceedings."

It is admitted on all hands that the II Party is not a public utility concern but it is purely a private concern. So the provisions of Section 22 do not apply to this case and if the provisions of Section 22 do not apply, the strike is not illegal because no notice was given. This is a case coming under Section 23 of the Industrial Disputes Act, 1947, under which there is a general prohibition of strikes and lock outs. Section 23 does nowhere contemplate the issue of a notice by the workmen before launching a strike. It envisages only four circumstances under which the workmen are not entitled to go on strike in breach of section 23 (a)(b)(bb) and (c). So much so one has to find out whether any such proceeding as enumerated in Section 23 (a)(b), (bb) and (c) existed in this case. Sri Rajwade admitted that the II Party is purely a private company and he further admitted that Section 22 is not applicable to this case. He further admitted that this industry had not been declared at that moment as essential service industry. He also admits that no dispute was pending between the I Party and the II Party in regard to any matter on 28th August 1965. Therefore he was convinced that the strike was not illegal and this is the admission he made at the time of arguments. Even under the Standing Orders of the Company nothing is mentioned about the issue of notice by the workmen before launching a strike. Therefore it is clear that Section 22 of the Industrial Disputes Act is not applicable to the II Party and as far as Section 23 is concerned, the II Party clearly admits that there existed no such circumstances as enumerated under Section 23 (a), (b), (bb) and (c) on 28th August 1965 on which date the strike was launched.

5. Having disposed of this preliminary objection regarding the legality or otherwise of the strike in favour of the I Party, I will now proceed to consider the other most important aspect of the strike, *viz*, the justifiability of the strike. It is needless for me to say from the fact of the evidence in this case, that this strike was forced by the management, rather imposed on the I Party by the management as a result of the delaying tactics adopted by the II Party in the matter of declaring bonus for the year 1964 It is contended by the I Party that even bonus for the year 1963 had not been paid though nearly 2 years had lapsed. It was argued that in the history of this Company, this company has not been in the habit of voluntarily declaring bonus as due to the workmen. After the passing of the Bonus Ordinance or even before, the claim for bonus by the workmen had been a matter of established right and it has assumed the shape of a legal right. It was no longer left to the option of the management to declare or not to declare, to pay or not to pay to these workmen bonus that is rightly due to them. Bonus is intended to fill in the gap between the earned wages and living wages and this gap is so wide in this case that it is admitted by Sri Rajwade and also Sri Kanere examined on behalf of the II Party that the workmen in the II Party are paid only Rs. 21 as basic wages with dearness allowance of Rs. 66. There is material to show in the shape of evidence of the witnesses examined by the II Party that the wages and the wage scales were fixed as far back as 1950. They were not revised nor was the D. A. revised from 1950. It is also proved beyond doubt that the cost of living, particularly after 1960 had shot up to the skies and was shooting up and even to this day the prices have no tendency of going down, but on the contrary there is still a rise in the prices of even the essentail articles like food and clothing. A rupee in 1950 is worth or was worth in 1964 less than 8 annas. Consistent with the rise in prices the wages should have been revised as also the D. A. This was not done by the II Party. It is needless for me to say that the life of the workmen had become miserable. Not to speak of the living wages the wages that were paid were not sufficient to secure for the workmen even the fodder minimum. Therefore the workmen had become exasperated. Any small benefit that would improve the position of the workmen, such as by way of bonus, was always looked for by the labour. On the other hand there is admission by Sri Rajwade and also by Sri Kanere and is further strengthened by the Balance Sheet, Ex. W-7, that the company had made a gross profit of Rs. 57,00,000 for 1964 and a net profit of Rs 17,00,000. It should not be forgotton that it is not the capital alone that had contributed for this profit. But the labour has

equally contributed its quota to earn this fabulous profit for the company in 1964. As I have already pointed out above the accounting year for this company is the calendar year *i. e.*, from 1st of January to 31st December of every year. The Company had closed its accounts for the year 1964 and the accounts had been finalised by April or may 1965. Sri Rajwade admitted that the Share holders meetings also had been over. On 25th May 1965 the Share-holders' meeting was held and within three weeks thereafter the Directors' meeting was also held and the Board of Directors had endorsed the balance sheet and the Profit and Loss Account of the Company for the year 1964 In other words, even the Share-holders had been paid their dividends before 25th May 1965 and the Gross Profit was ascertained for 1964 at Rs. 57,00,000 and the net profit at Rs. 17,00,000. There was nothing more to be done either by the Board of Directors or by the Auditors. Everything had been finalised and the only thing that had to be done was to declare bonus and pay the same to the workmen by the latest date of 15th June 1965. In the meanwhile the Bonus Ordinance came into being on 29th September 1965. Before that the Bonus Commission had submitted its report on 18th January 1964. The Government of India were anxious to see that those who had contributed for the earning of the huge profits, *viz*, the labourers should be paid their bonus as early as possible, lest there may be labour unrest in the country. Without even waiting for the Parliament to meet the President was pleased to promulgate this Bonus Ordinance on 29th May 1965 which later became the Payment of Bonus Act in the same year. It is therefore clear that there was no justification on the part of the management to deny or to postpone payment of bonus for 1964 to its workmen Sri Kanere has mentioned in his evidence that the Bonus Ordinance contained several ambiguities in the provisions for which clarifications were not available and this is also pleaded in the counter-statement. Except making a vague statement that the Bonus Ordinance contained a number of ambiguous provisions for which clarifications were tought for, the II Party has not made it clear either in the counter-statement or in the evidence of its witnesses as to what those ambiguities really were. No action was taken till 21st August 1965 on which date Sri Kanere swears, that he put up a Notice on the Notice Board as per Ex. M.9. For the first time in the year 1965 in connection with the payment of bonus for 1964, a notice was put up on 21st August 1965 as per Ex M9. By this time three months had lapsed since the coming into being of the Bonus Ordinance. One wonders what the company was doing till 21st August 1965. The accounts

had been completed and the Board of Directors meeting had bees held, the Balance Sheet and the Profit and Loss Account had been accepted by the Directors and even the dividend had been paid to the Share holders. But those who really contributed for payment of these dividends and earning of the profits, *viz.*, the labour had been denied its due share. For not paying bonus or for not even declaring bonus, the company had published in Ex. M-9 some lame excuses. I am going to show presently that these excuses are not only lame excuses but frivolous ones. Some imaginary difficulties have been put forward and they really did not exist at all. If there were any *bona fides* on the part of the company and if there was a genuine desire to pay the labour its due share of bonus, it should have done as early as in the month of June when everything was ready. Sri Kanere has produced Ex. M14 to show that bonus in the previous years had been paid very late in the next year. It might be during those years that the accounts were not finalised in time and therefore the workmen had to wait for the results of the accounting year. That by itself does not give any right to the company to tease the labour in this fashion as it has done in the present case. It is not the case of the Company that books regarding the Bonus Ordinance were not available. It is not as though the company did not have sufficient number of experts to interpret the provisions of the Bonus Ordinance. It has been managed by a most efficient body like Messrs. Forbes Cambell of Bombay. Sri Kanere swears that because there were some imaginary difficulties and ambiguities in the provisions of the Bonus Ordinance, an application was made by the Company on 9th August 1965 to the Secretary to the Government of Mysore, to grant some time pending clarifications of these ambiguities. Ex. M7 is that letter addressed to the Secretary to Government on 9th August 1965. The reply to this letter is Ex. M8 received by the Company form the Secretary to Government, Labour and Municipal Administration Department. This etter only says that attention is being paid to the letter addressed by the company as in Ex. M7.

6. Now let me examine the evidence of Sri Kanere in the light of this evidence. Sri Kanere tells in his chief examination that on 9th August 1965 the II Party sent a letter to the Secretary to Government. Labour Department as per Ex. M7 for extension of time for payment of bonus. He does not say that there were real difficulties and what those real difficulties were in the way of the company. No details of these real difficulties or ambiguities are mentioned in his evidence, much

less in the counter statement. Now let me see if these difficulties were really genuine which were felt by the Company before declaring bonus for 1964 If really the Company sincerely felt these difficulties and ambiguities in the provisions of the Bonus Ordinance, it would have made every effort to pursue the matter and get a clarification. But the difficulties were imaginary and ambiguous which really did not exist in actual fact. Towards the end of his examination Sri Kanere admits that subsequent to M8 i.e., reply from the Government of Mysore, the matter was not pursued at all with the Government. This betrays the insincere representation of the management in regard to bonus for 1964. If this reason is not believed and according to me it should not be believed, there was no reason for the Company to have waited even a minute longer than was necessary to declare bonus at whatever percentage it was possible, basing on the profits made by the Company for 1964. The evidence of Sri Kanere clearly establishes the hollowness of the case put forward by the II Party in trying to plead lame excuses to cover their insincere act.

7. Sri Rajwade attempted to argue on the basis of the Bonus Ordinance that there were real difficulties and ambiguities. He referred me to Section. 13 of the Bonus Ordinance. I will presently show that there were absolutely no materials to prove that there were any ambiguities in interpreting the provisions of the Bonus Ordinance. I would even go to the length of saying that inspite of the fact that these ambiguities were in existence in the minds of the company, nothing prevented the Company from declaring at least the minimum bonus which was payable to every worker under Sec. 10 of the Payment of Bonus Ordinace. Mr. Rajwade admitted that at least Sec. 10 did not represent any difficulty to the Company. Section 10 of the Payment of Bonus Ordinance makes it compulsory on every employer to pay the minimum bonus of 4% or Rs. 40 whichever is higher. Reading Sec. 10 it is seen that :-

> "Every employer shall be bound to pay to every employee who has worked with the establishment for all the working days in the accounting year, a minimum bonus which shall be 4% of the salary or wage of the employee for the accounting year or Rs. 40 whichever is higher, whether there are profits in the accounting year or not."

I am sure that this at least did not present any difficul'y or any ambiguity to the company. If the company had declared the minimum of 4% bonus or Rs. 40 whichever is higher to the workmen as soon as the Bonus Ordinance was received it would not have been open to the I Party to attack the *bona fides* of the compony in seeking clarification of the ambiguities. This should have been done at least in the month of June 1965 instead of waiting till 28th August 1965 on which day the company put up a notice stating that the company was going to pay 4% bonus for 1964 as advance. If the company had declared this early in the month of June itself and paid the amount, it would have solved the difficulties of the workmen to some extent. Why the company waited till 28th August 1965 is a thing which one is not able to understand. 4% or Rs. 40 whichever is higher according to sec. 10 had to be paid irrespective of the fact whether the company made any profit or not and in this case the Company had made profits of Rs. 57,00,000 gross and Rs. 17,00,000 net. Even this Notice Ex. M10 announcing to pay 4% bonus on 31st August 1965 is not straight forward. I say this because the company was bound to pay bonus within 8 months from the close of the accounting year and this is clear from Section. 19 of the Payment of Bonus Ordinance. Section. 19 of the Payment of Bonus Ordinance lays down a time limit within which all amounts payable to an employee by way of bonus under this Ordinance shall be paid in cash by his employer within a period of 8 months from the close of the accounting year. If this provision was not there, I am sure that even this 4% would not have been declared on 28th August 1965. Though of course the company could not escape payment of this minimum under Section. 10 at any cost it could have further teased the workmen by delaying even this payment of 4%. It is with that definite purpose the Ordinance contains a provision in Section. 19 (a) and (b).

8. Now turning to the real difficulties felt by Sri Raiwade I see their non-existence. As to how the Gross Profit is to be computed, Section 4 of the Bonus Ordinance clearly lays down. Regarding the available surplus in respect of the accounting year it is seen from Section. 5 that it shall be the Gross profits for that year after deducting therefrom the sums referred to in Section 6. Section 6 lays down the various items that are deductable from the Gross Profits. Section (7) lays down the calculation of direct tax payable by the employer and Section (8 lays down the eligibility of a particular worker for bonus in an accounting year and Section

(9) also deals with the disqualification of a worker to receive bonus. Section (11) has made it very clear about the maximum bonus. that a worker can claim in an accounting year. Section 12 lays down calculations of bonus with respect to certain employees. Sri Rajwade tried to point out that sections (12), (13) and (14) presented some difficulties to the Company. There are absolutely no difficulties whatsoever for interpreting Section 12. The Company had the account of each Officer and each worker and the salary or wage which he was drawing. Section 13 also does not present any difficulty because the company will have a mirror like account to show as to how many days in a year a worker had worked. It was easy for the Company to have calculated the amount of bonus payble to a worker by referring to the number of days he had worked in a year. So far as Section 14 is concerned, it again does not present any difficulty whatsoever. It relates to the computation of the number of working days excluding the lockout or strike period or the lay off period. So much so I say that either there were no difficulties or ambiguities existing in the mind of the company in the matter of calculation of bonus for 1964 or that these difficulties were purely imaginery, the reason being only to delay the payment of bonus to the workers for the year 1964. Further, there is no evidence to show that the management ever sought clarification of any such ambiguities. Excepting Ex. M7 no other document is produced before the tribunal by Sri Kanere in his evidence. This is further strengthened by the fact that after Ex. M8 the company did not seek for any clarification, much less for any further communication in the matter. The company did not pursue the matter further and this is also admitted by Sri Kanere in his evidence. Coming back to Ex. M7, it is not possible to read from Dx. M7 that any such clarification was sought for the imaginary ambiguities. Only extention of time for payment of bonus has been sought for. Ex. M9 when compared with Ex. M7 gives a different story altogether. Para 3 of Ex. M9 deals with the provisions of Section 19 and para refers to the ambiguities, complexities felt by the management. It is mentioned in para 4 that :—

> "The management has already sought for clarifications on the doubtful points through their Associations and as soon as the clarifications are received, the management will pay the bonus without any delay."

The management has sought to throw the blame on the Government for having introduced the Ordinance, which according to the management was full of ambiguities and anomolies, and further the management was hopeful of getting clarifications early.

Not a scrap of paper is placed before the tribunal to show that any such attempt was made by the management to obtain clarification. If really such a clarification had been sougnt for, it was quite possible for the management to have produced documentary evidence in this behalf. It only means that the plea that the management sought for clarificatfon is a deliberately false plea and this further discloses the *malafides* on the part of the management. This is reinforced by the fact that the Company did not persue the matter and get a clarification.

9. Coming to the evidence of Sri Kanere, he admits that the workmen went on strike on the issue of bonus. He also admits that in 1964 the II Party had made profits and therefore the workers were entitled to get bonus. Being a Labour Officer of the II Party he knew that the workers were entitled to bonus as per the L. A. T. formula before the issue of the Bonus Ordinance. It was his duty to have personally attended to the caluclations regarding the bonus due to the workers after the receipt of the Bonus Ordinance which was published on 25th September 1965. He admits that the Company is having an Accounts Department in the Mills at Gokak and also at Bombay. The Mills Registered Office is at Bombay. Sri Kanere did not make any efforts after the receipt of the Bonus Ordinance to make the calculations of bonus for 1964, nor did he ask the Accounts Department to make such calculations. If at all any difficulty should have been felt in the way of caluclation of the bonus for 1964, it was the Accounts Department that should have felt the difficulty. and Sri Kanere clearly admits that he did not ask the Accounts Department to make any such calculations. All this indicates the hollowness of the plea put forward by the II Party for postponing payment of bonus for the year 1964. Though the profits of the company, both gross as well as net had been ascertained and had been approved by the Board of Directors as early as 29th May 1965 the Company did not make any effort to declare bonus immediately. It did not show any inclination to move in that direction and and only on 9th August 1965 the Company made a pretence of applying for clarifications of ambiguities, and put up a Notice on 21st August 1965. The Notice put up on 21st August 1965, Ex. M9, does not refer to the minimum bonus that the company had to pay. It was only on 29th August 1965 Ext. M10 was put up and this was put up because of Section 19 (b) of the Bonus Ordinance which was there. There are sufficient materials to show even from the evidence of the II Party and the records produced by II Party that there were enough *bona fides* and there was enough justification for

the workmen to go on strike. It also establishes the *malafidy* attempt on the paort of the II Party to delay unnecessarily and to harass the workers who had already become perturbed on account of the rise in prices and the rise in the cost of living index. In this connection a few decisions may be noted to find out whether such strikes are justified or not. In 1960 (II) LLJ 78, Their Lordships of the Supreme Court have observed that :—

> "Collective bargaining for securing improvement on matters like these *viz*, basic pay, D. A, bonus, provident fund and gratuity, leave and holidays, is the primary object of a trade union and when the demands like these are put forward and thereafter a strike is resorted to, in an attempt to induce the company to agree to the demands or at least to open negotiations, the strike must *prima facie* be considered to be justified."

In this case there are all the materials required to justify the strike and those points are already mentioned above. Sri Rajwade has quoted a decision reported in 1960 (II) LLJ 243, to show that the present strike was a hasty one, the, thoughtless and could have been avoided if only the workers had followed the procedure laid down in the Act to secure the bonus. The observations in this case have also been cited. Their Lordships of the Supreme Court observe that:—

> "The demands were not of such an urgent nature that the interest of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through the industrial tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impugnity without exhausting reasonable avenues for peaceful achievement of their object."

Their Lordships further observed that:—

> "There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to

> expect the labour to wait till after asking the Government to make a Reference. In such cases strikes even before such a request has been made may will be justified.'

'The facts of the case dealt with by their Lord-hips are entirely different from the facts of the present case. In that case the workmen had slept over the matter for nearly 10 years without making any demand for Kambli allowance and all of a sudden they made a demand after 10 years and started the strike. Surely the facts of this case are entirely different and as has been observed time and again by their Lrodships of the Supreme Court, a decision should not be applied without reference to the facts of each particular case. In the same case their Lordships have made observations that there may be cases where the demand is of such an urgent nature that it would not be reasonable to expect the labour to wait till after asking the Government to make a Reference. The present case is a case coming under the exception made by their Lordships in the above decision. This decision far from helping the II party is certainly in favour of the I Party.

10. What happened after the strike would also be an important factor in deciding whether the strike was necessitated by the circumstances brought about by the management and whether the strike commenced and prolonged for unreasonable length of time. The strike commenced on 28th August 1965 when the 2nd shift workers refused to continue to work at 4 p.m. Immediately after 28th August 1965 the Union called for a meeting of all the workers on the very next day and formed an Action Committee with Sri Y. S. Arbhavi as Chairman and 5 people as Members of the Action Committee. This is borne out from Ex W2 and this matter was communicated to the Company on 31st August 1965 and the I Party requested the Company to have a discussion in the matter of bonus with the members of the Action Committee. The reply to Ex. W 2 is Ex. W3 Ex. W3 is a reply by the Company dated 1st September 1965 in which the Company did not come forward again with *bona fides* It wanted only certain persons of the Action Committee to meet the management for discussion and those persons are Sri B. S Gard and Sri K. D. Kulkarni. It is in the evidence of the I Party that this K. D. Kulkarni is running a rival Union and is hand-in-glove with the management. Ex. W3 again betrays the *mala fides* on the part of the management in inviting only two persons one of whom was a stooge in their hands. Rightly of course the members of the Action Committee replied to the

company as in Ex. W4, taking the company to task for having invited only these two persons for discussion. Finally the Assitant Labour Commissioner held discussions on 4th September 1965 and the result was that the workmen gracefully accepted the decision of the Assistant Labour Commissioner and immediately promised to withdraw the strike. This is borne out by Ex. W6. It was before the Assistant Labour Commissioner that the management came forward with a calculation of bonus for 1964 at 8.44 per cent on 4th September 1965. If the same thing had been done before, there would have been grace in it and there would have been *bona fides* on the part of the company. That this strike immediately was called off on 5th September 1965 is evident from the evidence of the witnesses of both the parties and from the documents like Ex. W6. The I Party workmen lost no time in immediately summoning a meeting of nearly 4 to 5 thousand workers the very next day and to form an Action Committee to negotiate with the management. In spite of the Company's unwillingness to invite all the members of the Action Committee, the company was forced to join the Action Committee on 4th September 1965 before the Assistant Labour Commissioner. That way also the strike was never unduly prolonged. A perusal of these circumstances therefore clearly indicates the attitude adopted by the II Party which was mainly responsible for the strike and it can never be said to be a hasty or unreasonable strike There are therefore sufficient grounds for me to hold that this strike was fully justified and the workmen are entitled to wages for the period of the strike between 28th August 1965 and 5th September 1965.

11. One other point was touched by Sri Sachindranath for the I Party. He wanted to show that this was not a strike but was a lock-out brought about by the management in asmuch as the management closed the doors of the Mills. This contention cannot be upheld in view of the exact wordings of the Reference. The reference is that there was a strike between these two dates and the wages are to be determined only for the strike period. That this tribunal cannot widen the scope of the Reference is very clearly laid down in the latest ruling of the Supreme Court reported in 1957 (I) LLG 428. This is that their Lordships have observed.—

> "While it is open to the appropriate Government to refer a dispute or any matter connected therewith for adjudication, the tribunal must confine itself to adjudication of the points of dispute referred to and matters

> incidental thereto. ' In other words, the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto."

Therefore Sri Sachindranath's contention cannot be upheld.

12. In the result, my finding on issue No. 1 framed by me is that the strike between 28th August 1965 and 5th September 1965 was fully justified and my finding on the latter part of issue No. 1 is that the management of Gokak Mills, Ltd., Gokak Falls, is not right in refusing the claims of the workmen for wages for the strike period. There will therefore be an award in favour of the I Party directing the II Party to pay wages for the strike period between 28th August 1965 and 5th September 1965. It appears that 29th September 1965 and 5th September 1965 are both Sundays and most of the workers are daily-rated workers and they are not engaged on Sundays. Such of those who are not engaged on Sundays are not entitled to wages on Sundays, and Sundays in their case or excluded. For the other period between 28th August 1965 and 5th September 1965 the workers are entitled to wages.

13. Regarding costs, the II Party will pay a sum of Rs 200 as costs to the I Party.

A. PANCHAKSHARIAH,

Presiding Officer,
Industrial Tribunal, Bangalore—2.